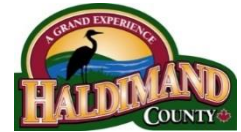

HALDIMAND COUNTY

Report PD-40-2018 Information Report Regarding Cannabis Retail Stores and Cannabis Production Facilities



For Consideration by Council in Committee on December 11, 2018

OBJECTIVE:

To provide Council with information related to retail stores for recreational cannabis sales within the County and to outline potential options and the process for the regulation of cannabis production facilities.

RECOMMENDATIONS:

1. THAT Report PD-40-2018 Information Report Regarding Cannabis Retail Stores and Cannabis Production Facilities be received;
2. AND THAT the decision to opt in/opt out for Cannabis Retail Stores within Haldimand County be delayed until January 21, 2019 to allow for the consideration of public input and provision of additional information by staff;
3. AND THAT staff develop and issue a notice advising the public of the availability of the subject staff report and the opportunity to provide input at the January 21st Council meeting;
4. AND THAT in principle, the draft regulations for Cannabis Production Facilities included as part of report PD-40-2018 be supported;
5. AND THAT staff complete the prescribed public process and bring forth a general zoning amendment relative to Cannabis Production Facilities no later than March 27, 2019 Council in Committee.

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Approved: Donald G. Boyle, Chief Administrative Officer

EXECUTIVE SUMMARY:

This information report addresses two distinct issues as follows:

- Cannabis retail stores with the focus being on the Province's requirement for a municipal Council decision to opt in/opt out of hosting these businesses within its jurisdiction; and
- Proposed amendments to the County's Zoning By-laws relating to cannabis production facilities with the focus being on land use impacts and potential regulations.

This report is structured to provide Council with information on both issues and outlines the decision making requirements and process associated with each issue. This report identifies the known implications associated with the decision options but ultimately concludes that key information from the

Province is missing in order to make an informed decision. As such the report recommends that Council delay it's opt in or opt out decision to January 21, 2019 to try to obtain more information and to allow public input from County ratepayers and businesses. The opt in/opt out decision must be provided to the Province, in the form of a resolution, passed by Council on or before January 22, 2019.

BACKGROUND:

The intent of the subject information report is to address two emerging issues stemming from the legalization of cannabis at the federal level and the subsequent Provincial legislation. These two issues are:

- (i) the private, retail sale of recreational cannabis; and
- (ii) cannabis production facilities (i.e. wholesale growing, manufacturing, processing, etc. of cannabis for both recreational and medical usage).

The regulation of cannabis—both retail sale and production facilities—are primarily regulated through senior levels of government. The federal government licenses production facilities for both medicinal and recreational cannabis and the provincial governments establish frameworks to regulate how retail sale of recreational cannabis will be addressed.

With the federal legalization of cannabis, the provincial government has made several legislative amendments to establish a (future) private retail framework for recreational cannabis. Through the associated recreational cannabis retail legislation, the provincial government has provided municipalities with the option to not permit the private retail sale of cannabis (i.e. opt out) within their municipal boundaries or to formally opt in and permit the use, which will then subsequently be regulated solely by the Province. The opt in/opt out decision must be provided to the Province in the form of a resolution passed by Council on or before January 22, 2019. Without a resolution from Council, the Province will permit private cannabis retail stores in Haldimand County as a default. It is this specific time limit that has necessitated the need for this information report and a decision of Council at/before its January 21, 2019 meeting.

This report will overview the provincial framework applicable to the retail sales of cannabis, with a focus on the two options available to municipalities across the Province of Ontario (i.e. permitting or prohibiting the private retail sale of recreational cannabis). This report seeks to provide Council with a clear understanding of options available to the County and to also weigh the pros/cons of each option to allow Council to make an informed decision.

This report will also provide information regarding cannabis production facilities, more specifically, where these uses are currently permitted and preliminary zone provisions that address land use concerns. This aspect of the report is in response to Council resolution of November 5, 2018 which stated: "*THAT Staff be directed to report back to Council in Committee on December 11, 2018 with an overview of zoning options and a process that would be required to establish formal zoning regulations for cannabis related land uses within the County, taking into account issues such as odour, noise, and lighting*".

General Legislative Overview:

Federal Legislation:

On October 17th, 2018 the *Cannabis Act* (at the federal level) came into force through Bill C-45. This *Act* ultimately legalized cannabis for recreational purposes throughout Canada and establishes the federal, legal framework for controlling the production, distribution, sale and possession of cannabis across the Country. Through Bill C-45, the *Controlled Drug and Substance Act* and the *Criminal Code*

have also been amended to reflect the legalization of cannabis and the amendments introduced by the federal *Cannabis Act*.

The federal *Cannabis Act* establishes the legal age limit for the purchase and consumption of recreational cannabis to 18 years of age (unless otherwise stated within the Province), the legal amount of cannabis allowed to be possessed in public, permissions for retail sales of recreational cannabis from provincially-licensed retailers, and permissions for at home growth (i.e. up to four (4) plants per residence). This *Act* does not currently allow for the sale of cannabis edible products and the sale of medical cannabis, as it will still exclusively be the responsibility of the Federal government. Access to cannabis for medical purposes will continue and will generally remain unchanged from the process already established and in existence to date by the Federal government.

With regards to cannabis production facilities (i.e. the growing, manufacturing, production, etc. of cannabis), the legalization of cannabis will now also permit cannabis production facilities to produce and/or manufacture cannabis for recreational purposes, in addition to medical purposes. The role of the Federal government will continue to be the licensing authority for any and all cannabis production facilities through Health Canada. The federal *Cannabis Act* specifically establishes requirements for producers growing and manufacturing cannabis and establishing rules and standards for: types of cannabis products for sale; packaging and labelling; standardized serving sizes and potency; prohibition of certain ingredients; good production practices, and establishing restrictions on product promotions to ultimately prohibit the enticement of and marketing to youth. Further, the licensing process through Health Canada requires detailed information to be supplied as part of a license to produce application. This includes, but is not limited to the following:

- Obtaining and providing proof of security clearance for various personnel involved with the production facilities such as the head of security, master grower, quality assurance professionals, etc.;
- Provide a copy of the notice provided to the host municipality;
- Specific site details (i.e. surveys, site plan, details regarding indoor and outdoor activities, etc.);
- Identification of physical security requirements via a site plan and a security plan. There is a requirement to design the site to limit unauthorized access, including providing physical barriers, ways to control and restrict access, detailed record keeping of those entering or existing the site, having visual monitoring and recording devices and systems, alarm systems, etc.
- There are also Good Production Practice requirements and it must be demonstrated, with each application, how these requirements are met/complied with. Some of these requirements include: appropriate storage location and conditions; distribution; sanitation; air filtration systems; quality assurances; methods and procedures for processing; testing of each batch of cannabis; etc.

The Good Production Practice requirements established as part of the applications for cannabis production facilities, as noted above, have specific requirements related to air filtration within the structures of production facilities. The internal areas of the facility/structure dedicated to producing, packaging, labelling and storing cannabis must have a system that filters air to prevent the escape of odours. This includes a need to provide as part of the license application details regarding the air filtration system (i.e. type, specifications), including the number of systems utilized, location of air filters, and a diagram or floor plan detailing the filtration and ventilation system. However, staff does note that this does not apply to outdoor cultivation, propagation (i.e. splicing plants), or harvesting.

As mentioned in the outset of this section, the federal *Cannabis Act* has provided the provinces and territories with the authority to establish their own retail model for recreational cannabis. The Province

of Ontario has a detailed retail model proposed for the future, which is described in the ‘Provincial Legislation’ section below.

Provincial Legislation:

At the provincial level, on October 17th, 2018, Bill 36—the *Cannabis Statute Law Amendment Act* received Royal Assent. This *Act* updates and establishes the (new) provincial legislative framework for recreational cannabis sales. This Bill has made several amendments to existing *Acts*:

- the provincial *Cannabis Act*, 2017; which is proposed to be renamed to *the Cannabis Control Act*, 2018;
- the *Smoke-Free Ontario Act*, 2017;
- the *Highway Traffic Act*;
- the *Ontario Cannabis Retail Corporation Act*, 2017;
- the *Liquor Control Act*; and
- has enacted a new piece of legislation—the *Cannabis License Act*, 2018.

Under the previous, Liberal government, the intent of the Province was to develop a retail store model similar to the Liquor Control Board of Ontario (LCBO) for the sale of recreational cannabis by the Province. However, the new Conservative government has established a revised approach via Bill 36 which allows for the online retail sale of recreational cannabis through the Ontario Cannabis Store and to date, the only way to legally obtain recreational cannabis is through this online system. However, the Province has indicated that after April 2019, private retail cannabis stores will be permitted to augment the online system and this is the basis for the municipal opt in or opt out decision.

Overall, it is clear that there are distinct roles for both the federal and provincial governments that specifically stems from the legalization of cannabis for recreational purposes. Although the roles vary, the role of each government level is clearly outlined through legislation. More specifically, it is the exclusive role of the federal government (i.e. Health Canada) to license any and all cannabis production facilities (also known as grow operations) regardless if the operation seeks to grow and/or produce medical cannabis or cannabis for recreational purposes. Meanwhile, the Province controls the retail end of recreational cannabis within Ontario (through the Alcohol and Gaming Commission of Ontario) and is the authority that establishes the retail model, which in this case is the current online sale model with the future intent being private retail operations. The Province does not have a role in the licensing for any cannabis production facilities.

ANALYSIS:

PART 1: Private, Cannabis Retail-Opt in or Opt out:

As noted at the outset of this report, within the ‘General Legislative Overview’ section, the legalization of cannabis within Canada has resulted in changes to provincial legislation, with permissions being established for the retail sale of cannabis via private businesses/operators. It is anticipated that the first retail store under this *Cannabis License Act*, 2018 will be operational on or after April 1, 2019.

Licensing and regulating these retail uses will be governed entirely by the Alcohol and Gaming Commission of Ontario (AGCO). Through the *Cannabis License Act*, 2018, Haldimand County (and all other municipalities) have been provided with two options to consider in relation to private cannabis retail stores. The options available are as follows:

- (i) Option #1-Permit private, cannabis retail stores (i.e. opt in); or

(ii) Option #2-Refuse private, cannabis retail stores (i.e. opt out).

A municipality can opt out and prohibit cannabis retail stores from being located within their municipal boundaries if a resolution is passed by Council on or before January 22nd, 2019 and then provided to the AGCO. If the opt out approach is chosen, this means that all retail cannabis store applications within Haldimand County will be refused by the AGCO. If the County decides to opt out of the retail stores for cannabis, there is still a one-time opportunity to lift this prohibition at a later date and opt in at that time. Staff considers the opt out now and opt in at a later date to be Option #3. However, staff emphasizes that if the County decides to opt in and permit this use—either at the outset of this process or at a later date—the opt in is final and cannot be reversed.

It is also important to note that if a municipality chooses Option #1 (opt in now) or Option #3 (opt in at later date) the legislative changes remove some municipal powers and authorities, as set out within the *Municipal Act* and the *Planning Act*. More specifically:

- a municipality is not permitted to establish their own business licenses via the *Municipal Act* as the Province will provide the sole licensing regime for these store types; and
- a municipality cannot pass any zoning by-laws, interim control by-laws or establish site plan control, under the *Planning Act*, that would ultimately distinguish a building, structure or use of land that includes the sale of cannabis. This means that decision making authority relative to the location and land use regulation of these retail stores will rest with the AGCO, not the municipality.

Based on staff's review of the legislative changes, the following chart (on report page 6) outlines the pros and cons and overall issues associated with each available option related to retail cannabis sales.

Regulations under the *Ontario License Act, 2018*:

On November 15th, 2018 the Province released draft regulations (468/18) for retail stores. Since this time, the regulations and the *Cannabis License Act, 2018* have come into full force and effect. Within these regulations, several key items are addressed:

- There is clarity as to what the 'public interest' is when the AGCO seeks commentary from municipalities regarding new retail operations. The 'public interest' has been identified as protecting public health and safety, protecting youth and restricting their access to cannabis, and preventing illicit activities;
- There is a setback requirement of 150 metres (492.1 feet) from both public and private schools that has been set;
- Store hours are identified as Monday to Sunday, 9:00 am to 11:00 pm, which generally aligns with the permissions in place for the sale of liquor/alcohol;
- What can be sold within these stores has been identified (i.e. cannabis products, cannabis accessories and shopping bags); and
- There is a requirement for these stores to be located as stand-alone stores only (i.e. cannabis cannot be on a shelf of an existing retail use such as a convenience store or within a liquor or beer store);

It is understood by staff that the AGCO will be consulting further on the regulations, licensing process and proposed operational standards for stores through a series of webinars leading up to and after December 11th Council in Committee. Staff will continue to monitor and will partake in these webinars and will report back to Council if required. Staff further notes that the AGCO will be accepting private retail applications starting on December 17, 2018; however, it is still understood that (i) no stores will

be allowed within a community until on or after April 1, 2019; and (ii) that these stores will only be permitted if a community has opted in.

In terms of making the opt in or opt out decision, there are a number of key matters that need to be considered. These matters include:

1. Consideration of how the County currently addresses other legal uses (liquor stores, beer stores, pharmacies and treatment clinics, payday loan facilities) that can have off property impacts and whether the proposed provincial regulatory scheme is significantly different or not. Of note, all of the above uses are permitted as of right now in zones where retail is allowed and do not have specific regulations associated with them.
2. Uncertainties with respect to how the Province will regulate the retail stores and specifically whether it will follow municipal land use plans that direct retail uses to specific locations with associated parking regulations that relate to anticipated activity levels in the municipality similar to how LCBO and Beer Stores are regulated.
3. Financial considerations: If the County opts out it will only be entitled to a very small amount of funding (\$10,000) but will not receive any future funds if the Province's portion of the federal excise duty on recreational cannabis exceeds \$100 million over the first two years of legalization. The Province has signalled an intent to share with municipalities on a 50/50 basis any surplus revenue.
4. Social considerations: If the County opts out it can be expected that residents desiring to obtain cannabis will be restricted to either online retail, traveling to nearby jurisdictions permitting the use or continuing to use the underground, unregulated market.
5. Economic considerations: Potential implications of the decision in terms of job opportunities, investment and assessment creation.
6. Retail sales associated with production facilities: If the County opts in, retail sales will also be allowed accessory to production facilities; whereas, an opt out decision would prohibit the retail sales as an accessory use.

	Option 1 – Opt in		Option 2 – Opt out		Option 3 – Opt out now, opt in later	
	Pro	Con	Pro	Con	Pro	Con
Funding incentives	<ul style="list-style-type: none"> Provincial commitment to split federal tax money gained over the first two (2) years. This will guarantee \$10,000 (at a minimum) in total per municipality over a two (2) year time frame. Those that opt in could receive additional funding on a per household basis to assist with potential unforeseen circumstances related to the legalization of recreational cannabis. If Ontario's portion of the federal excise duty on recreational cannabis over the first 2 years of 	<ul style="list-style-type: none"> Details of the additional funding per household are unknown. While enforcement responsibility is set out as AGCO's responsibility, it is unclear if they have the resources or whether enforcement will be downloaded to By-law and Health inspectors—in this regard, it is unclear if the financial incentives would fully offset the impacts to municipal services and enforcement. 	<ul style="list-style-type: none"> All municipalities that opt out will still receive \$10,000 over two year period to assist with their planned legalization activities (education, inquiries). 	<ul style="list-style-type: none"> County will not have access to the financial incentives per household basis. It is unclear if there would be any retroactive funding if County was to opt in at a later date. County would not share in the revenues over \$100 million. 	<ul style="list-style-type: none"> If County opts in at later date, would still be eligible for \$10,000 in funding from the Province over a two (2) year time frame. County may still be eligible for additional funding on a per household basis to assist with potential unforeseen circumstances related to the legalization of recreational cannabis. 	<ul style="list-style-type: none"> County would not share in the Province's portion of federal excise duty.

	Option 1 – Opt in		Option 2 – Opt out		Option 3 – Opt out now, opt in later	
	Pro	Con	Pro	Con	Pro	Con
	legalization exceeds \$100 million, the Province will provide 50% of the surplus to municipalities.					
Municipal regulation/ decision authority	<ul style="list-style-type: none"> • License Act requires the AGCO to provide a 15 day notification for new retail sales licensed within a municipality. • Municipalities have the opportunity to comment on future retail store locations. • The AGCO is required to consider comments from a municipality and to determine if the location of a store is ‘in the public interest’. 	<ul style="list-style-type: none"> • Municipalities are commenting agent only—it is unclear how much weight the comments of a municipality will be given by the licensing body (i.e. AGCO) when considering retail sites. • Approval authority is solely with the Province (via the AGCO). • There are concerns relating to the commenting period time line given, it is short/condensed (i.e. 15 days). • It is unclear what type of public engagement will be required in order to provide appropriate commentary, if any. 	N/A	N/A	Same as Option 1.	Same as Option 1.

	Option 1 – Opt in		Option 2 – Opt out		Option 3 – Opt out now, opt in later	
	Pro	Con	Pro	Con	Pro	Con
Economic benefits	<ul style="list-style-type: none"> • Job creation opportunities. • Attract individuals to the County which could have spin off economic impacts (e.g. shopping at other businesses in the area). • Could also reduce the number of vacant rental units within the County. In 2017, the total vacancy rate for the Community Improvement Areas within the County totalled 9%. 	N/A	<ul style="list-style-type: none"> • An opt out still allows an opportunity to opt in at a later date which could allow retail/ job creation to be realized. 	<ul style="list-style-type: none"> • Potential loss of a new opportunity for retail, job creation, and tourism for the County. • Anticipated that consumers will travel to adjacent jurisdictions that permit the retail sale to make primary (cannabis) and secondary (fuel, food, etc.) purchases. 	Same as option 1.	Same as option 1.
One time decision	N/A	<ul style="list-style-type: none"> • Once a municipality chooses to opt in and allow privately operated, licensed retail cannabis business, this permission cannot be revoked at a later date. Further, all site 	N/A	N/A	<ul style="list-style-type: none"> • If the County does not opt in at this time, there is a one time opportunity to opt in at a later date. There is no 	Same as option 1.

	Option 1 – Opt in		Option 2 – Opt out		Option 3 – Opt out now, opt in later	
	Pro	Con	Pro	Con	Pro	Con
		locations and licensing will be entirely governed by the Province.			time limit applied to a municipality if it chooses to opt in at a later date.	
Opportunity to observe/ assess	N/A	N/A	N/A	N/A	<ul style="list-style-type: none"> • Provides time for uses to be established in other municipalities and for the County to observe how they operate and function. • Allows the County time to review how key issues are (or are not) being addressed through regulations. • There will also be other associated challenges stemming from cannabis legalization and the retail uses that will need to be assessed (i.e. 	N/A

	Option 1 – Opt in		Option 2 – Opt out		Option 3 – Opt out now, opt in later	
	Pro	Con	Pro	Con	Pro	Con
					such as edible products proposed to be permitted in October 2019 and the likelihood of future, public consumption venues).	
Public input	N/A	N/A	N/A	N/A	<ul style="list-style-type: none"> An issue that effects all residents within the County. Approach provides an opportunity to consider public input on the matter and have better informed decision. 	N/A
Health (per comments from Health Unit—see also Attachment 1)	<ul style="list-style-type: none"> Health and social harms can be reduced if retail market is regulated. 	<ul style="list-style-type: none"> Increased availability of substance results in increased consumption which can lead to significant health and social harms and costs (per Health Unit). Unknown aspects of Province’s 	<ul style="list-style-type: none"> Less concern /potential impact relative to consumption increases. 	<ul style="list-style-type: none"> May create health inequity for vulnerable populations as well as drive individuals to illicit market. 	<ul style="list-style-type: none"> Opportunity to better understand implications of Province’s regulations. Same as Option 1. 	Same as Option 1.

	Option 1 – Opt in		Option 2 – Opt out		Option 3 – Opt out now, opt in later	
	Pro	Con	Pro	Con	Pro	Con
		regulations result in concerns for proximity of use to vulnerable populations/youth serving facilities (other than schools i.e. places where youth frequent).				
Policing (per comments from OPP)	Unknown—at the time of writing this report, staff reached out to the local representatives with the Ontario Provincial Police (OPP); however, formal comments have not yet been provided to staff for inclusion within this report.					

Unknown Factors Associated with Option #1 (Opt In):

At the time of writing this information report and identified through Planning staff's research, there are several areas of concern and unknowns related to the introduction of cannabis retail stores. These items are identified below. As noted previously within this report, the regulations for cannabis retail stores have been released. The regulations have provided some additional clarity; however, there are still areas that, in staff's opinion, are not fully addressed or remain as questions. These areas are as follows:

Locations

The regulations do not identify potential locations for retail operations. More specifically, the regulations are not explicit in terms of whether, like the LCBO or Beer Store, the use will be directed to areas in the municipality where retail use is permitted or whether it will be allowed in any zone such as commercial area, residential area, industrial area, etc. This is a key issue from a land use compatibility perspective which requires clarification from the Province.

In addition to the above, the various Federal and Provincial *Acts* appear to set the stage for retail operations to be permitted as part of licensed cannabis production facilities which typically takes the form of greenhouse operations in rural agricultural areas. Staff's understanding of the legislation is that an opt in decision would permit these, and an opt out decision would prohibit them. What is not clear from the legislation is what authority the County would have to regulate such accessory use through zoning provisions on matters such as parking, size and setbacks, etc. Staff is working to confirm this through further investigation of the legislation with the County's solicitor.

Lastly, from a land use compatibility perspective, a tool often utilized by a municipality and Planners is location and separation distance to mitigate potential incompatibilities. It is understood, through the release of the regulations that there will be a 150 metres (492.1 feet) setback requirement from schools (public and private); however, the regulations do not appear to address any additional setbacks from other uses typically considered to be 'sensitive land uses' such as residential areas, religious institutions, seniors facilities, etc. or other locations that youth frequent. Key concerns relative to the interactions of these uses are parking, traffic and intensity of the retail cannabis use.

Design Requirements and Zoning Provisions

Municipal zoning by-laws establish the applicable law for development in terms of where uses are or are not permitted along with other provisions related to setbacks, building height, lot size, lot coverage, parking, etc. However, if the County opts in to allow cannabis retail, the 'approval authority' lies with the AGCO. It is still unclear if these future uses will be obligated to meet existing, local zoning requirements when new construction is proposed. Zoning provisions (such as those noted above) serve to ensure there is consistent building form and complementary types of development. In addition to this, it is unclear if municipal site plan approval process would be applied to new construction (as is present standard). Site Plan Control for site development is a key mechanism utilized by the County to ensure appropriate, compatible, and functional development that takes into consideration technical matters such as grading, servicing, storm water management, parking layout, landscaping and lighting. The applicability of these two municipal instruments is critical and needs to be clarified by the Province.

Licensing Appeal Tribunal

There is an appeal process for the licensing process; however, it is unclear how this appeal process will work and if there is future obligation applicable to the County through this appeal process based on commentary provided, etc. There is a potential that this could result in staff time and County costs, specifically if there is municipal staff involvement required. The regulations do not add any clarification regarding this item.

Enforcement

The AGCO will designate inspectors to carry out inspections and ensure compliance with the *Act* and regulations; however, who these inspectors will be and if there will be enough appointed is unknown.

Investigators will also be appointed, and any power of a police officer under the *Cannabis Control Act* (minus arrests) could be given to any person or class of person, if the AGCO chooses to. The role of investigators is to determine if there is a contravention or failure to comply with the *Act* and regulations.

Overall, it is unknown, but there is a potential that these delegations of the above noted powers could potentially fall to municipal By-law Enforcement Officers. This would prove to be challenging, time consuming and costly to the municipality if so. While there would be some funding provided by the Province to off-set some of these costs, it is also not known at this time what the total cost could be for the County and what percentage the Province's funding would cover. Staff continues to investigate this matter and will report back on its conclusions as part of the subsequent January report.

Next Steps:

With the information currently available, some of which requires clarification from the Province, and given there remains another Council meeting (i.e. January 21st) prior to an opt in/opt out' decision being required (i.e. January 22nd), staff are recommending that no decision be made at this time and that the following take place between now and the next meeting:

- Staff participate in various webinars/information sessions being offered by the AGCO in late November/early December to seek clarification on some of the matters outlined in this report;
- Staff develop and release a general notice advising the public of the availability of the staff report for review (on County website) and inviting public input at the January 21st Council meeting; and
- Council members engage with their constituents to obtain public input to assist in informing the final decision.

Should Council concur with the above, staff propose to bring forward a brief follow up report to the January 15th Council in Committee meeting to summarize additional information relative to the draft regulations. A decision would need to be made as part of the deliberations at that meeting with ratification by Council on January 21st in order to meet the prescribed deadline.

PART 2: Cannabis Production Facilities:

The second component of this information report is related to cannabis production facilities. Currently, facilities for both medical and recreational cannabis are regulated federally through a licensing system that is operated by Health Canada. The aforementioned licensing process establishes details regarding security; production practices (including odour control); packaging, labelling and distribution; and client registration and transactions, etc. The role of a municipality in relation to cannabis production facilities is limited to: (i) where a facility can be located (i.e. land use designation and zone), and (ii) site layout (i.e. setbacks, site design via site plan control). Currently, Haldimand County's approval process for these uses are limited to determining the appropriate location for these uses (i.e. zoning) and the issuance of permits under the Ontario Building Code. The County permits cannabis production facilities within the 'Agriculture (A)' Zone as the use is treated as an agriculture use (i.e. a growing of a crop) similar to any other greenhouse activity. Therefore, these uses are currently subject to the 'A' Zone provisions in terms of setbacks, building heights, minimum lot area, etc. Currently these uses, as well as other agricultural uses, are not subject to site plan control. At present, staff is aware of six (6) cannabis production facilities in operation within Haldimand County with several more likely to be established within the coming months.

At the November 5, 2018 Council meeting, Council supported a motion as follows:

“THAT Staff be directed to report back to Council in Committee on December 11, 2018 with an overview of zoning options and a process that would be required to establish formal zoning regulations for cannabis related land uses within the County, taking into account issues such as odour, noise, and lighting”

In response to this, staff has developed preliminary zoning provisions which are being presented as part of this report as information only, and Council is not requested to make a decision/enact these provisions at this time. The draft provisions (included in full as Attachment 2) have been developed in connection with the County’s consultant on the comprehensive zoning by-law project (WSP) and are informed by the land use planning issues that have been identified through various studies and in other municipal jurisdictions through their analyses. More specifically, the draft provisions take into account and seek to respond to the following:

- **Odour and noise issues**—are primarily regulated via the license requirements. From a zoning perspective this issue along with other compatibility matters is addressed via increased setbacks (e.g. 150 metres from residential lot, institutional use or park). The 150 metres setback is a typical approach of other Ontario municipalities that have regulations in place. It is similar to setbacks that are in place (in the County) for standard sized livestock facilities and kennels. Staff have also consulted with the County’s solicitor regarding provisions for air filtration systems which have been implemented in some municipalities. Advice received by staff is that such provisions are ultra vires (outside of the jurisdiction of the municipality) given there is a federal license requirement for such installations and due to the fact that odour regulation is not a land use planning matter but a provincial environmental matter falling under the jurisdiction of the Ministry of the Environment, Conservation and Parks (MECP);
- **Defining the use/location**—the proposed definition makes it clear that permitted operations would be limited to those that are **licensed** and authorized to produce cannabis (i.e. communal grow operations would not be permitted) and that they would be limited to the Agricultural and Industrial zones;
- **Layout and function on the property**—addressed via specific property line setbacks, restrictions on outdoor storage and parking standards and the requirement for site plan approval; and
- **Site plan control**—The draft provisions also identify that all cannabis production facilities would be subject to site plan control. Site plan control is a common mechanism used by a municipality to ensure the proper design and functionality of a use and also serves as a key tool for land use compatibility. This would provide the County with regulatory authority relating to the siting of all aspects of a development, orientation/location of buildings, review of photometric (lighting) plans, grading/drainage and any buffering requirements (visual or otherwise).

The basis of the proposed zoning framework is to try to ensure that in the agricultural areas cannabis production facilities are treated in a manner consistent with other intensive uses such as livestock operations and in recognition that normal farm activities such as manure spreading, harvesting, and spraying also are typical in agricultural areas. This is in recognition that the use is legal and that facilitating agricultural operations is the primary objective of the municipality’s Official Plan in these areas.

It is important for staff to emphasize that the most appropriate way to address odour issues is through the employment of things such as increased setback requirements and the proper usage of site plan control (e.g. to orient buildings such that venting is away from sensitive uses). As noted above, while some municipalities have explored/implemented odour control by-laws, staff have consulted with the

County's solicitor and determined that this approach is questionable given jurisdictional issues and the practical challenges of enforcement.

Next Steps:

The provisions supplied within this report in Attachment 2 are preliminary and intended to demonstrate the structure and effect of regulations. As the intent is to establish a general zoning by-law amendment for cannabis production facilities, there is a need and a requirement for the appropriate public process to take place. This includes providing the public and potential producers with the opportunity to review draft provisions and provide comment on same. Staff will be initiating this process in the coming weeks and will hold a public meeting (at Council in Committee) early in 2019 to consider a general amendment to all three of the County's zoning by-laws.

FINANCIAL/LEGAL IMPLICATIONS:

Opt in: there could be operating costs incurred for the County if enforcement responsibilities are downloaded by the Province. While some funding will be made available to municipalities to off-set costs, it does not appear that it would cover 100% of potential costs.

Opt out: N/A

STAKEHOLDER IMPACTS:

The Haldimand-Norfolk Health Unit has provided commentary regarding private cannabis retail sales to Planning staff in order for these comments to be incorporated for Councils consideration. These comments generally speak to the pros and cons of opting in and out, as identified by the Health Unit. The full comments are identified in Attachment 1.

REPORT IMPACTS:

Agreement: No

By-law: No

Budget Amendment: No

Policy: No

ATTACHMENTS:

1. Health Unit Comments.
2. Draft Zoning Provisions for 'Cannabis Production Facilities'.